

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 040001FCIP	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/EP2005/002227	International filing date ( <i>day/month/year</i> ) 03 March 2005 (03.03.2005)	Priority date ( <i>day/month/year</i> ) 05 March 2004 (05.03.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant UMICORE AG & CO KG		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 <i>bis</i> .1(a).																								
2.	This REPORT consists of a total of 6 sheets, including this cover sheet.  In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input checked="" type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44 <i>bis</i> .3(c) and 93 <i>bis</i> .1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44 <i>bis</i> .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No. +41 22 338 82 70	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 100%;">Date of issuance of this report 05 September 2006 (05.09.2006)</td> </tr> <tr> <td>Authorized officer  <div style="text-align: right; font-weight: bold;">Ellen Moyse</div></td> </tr> <tr> <td>c-mail: pt05@wipo.int</td> </tr> </table>	Date of issuance of this report 05 September 2006 (05.09.2006)	Authorized officer  <div style="text-align: right; font-weight: bold;">Ellen Moyse</div>	c-mail: pt05@wipo.int
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# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

REC'D 12 JUL 2005

WIPO

PCT

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To:

see form PCT/ISA/220

15/9

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/EP2005/002227

International filing date (day/month/year)  
03.03.2005

Priority date (day/month/year)  
05.03.2004

International Patent Classification (IPC) or both national classification and IPC  
H01M8/10, H01M8/04

Applicant  
UMICORE AG & CO KG

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b(s)(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Authorized Officer

Standaert, F

Telephone No. +31 70 340-4608



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/002227

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material:  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing:  
☐ contained in the international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**Box No. II Priority**

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1. ☐ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☒ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Re Item V.

1 Reference is made to the following documents:

D1 : EP 1 229 600 A (MATSUSHITA ELECTRIC IND CO LTD) 7 August 2002

D2 : US 5 350 643 A (IMAHASHI ET AL) 27 September 1994

2 INDEPENDENT CLAIMS 1 AND 9

2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 1 does not involve an inventive step in the sense of Article 33(3)PCT.

2.1.1 Document D1, which is considered to represent the most relevant state of the art to the subject matter of claim 1, discloses (the references in parentheses applying to this document):

Membrane electrode unit for membrane fuel cells, comprising an ion-conducting membrane, at least one anode electrode layer, at least one cathode electrode layer, at least one porous, water repellent gas diffusion layer mounted on the anode side and at least one porous, water repellent gas diffusion layer mounted on the cathode side (paragraphs [0033] and [0072]), wherein

- the total pore volume of the cathode gas diffusion layer is higher than the total pore volume of the anode gas diffusion layer (paragraphs [0074], [0075], [0128] and [0129]), and

- the amount of water repellent agent in the anode and the cathode gas diffusion layer is in the range of 20 to 35% by weight, based on the total weight of the gas diffusion layer (paragraph [0093]).

- the amount of water repellent agent in the anode gas diffusion layer is **lower** than the amount of water repellent agent in the cathode gas diffusion layer (paragraph [0072]).

2.1.2 The subject-matter of independent claim 1 differs from the disclosure of D1 in that:

- the amount of water repellent agent in the anode gas diffusion layer is **identical or higher** than the amount of water repellent agent in the cathode gas diffusion layer.

2.1.3 The problem to be solved by the present invention may therefore be regarded as

Providing an alternative way to prevent flooding of the cathode gas diffusion layer.

2.1.4 In view of D2 the solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons:

Document D1 (paragraph [0072]) addresses the problem of flooding of the cathode gas diffusion layer in a polymer electrolyte fuel cell. The feature given under paragraph 2.1.2 above is described in document D2 (paragraph [0101]) as providing the same advantage as in the present application. The skilled person would therefore regard it as a normal design option to include this feature in the polymer electrolyte fuel cell described in document D1 in order to solve the problem posed.

2.1.5 Therefore the features disclosed in D1 and D2 would be combined by the skilled person, without exercise of any inventive skills in order to solve the problem posed. The proposed solution in independent claim 1 thus cannot be considered inventive (Article 33(3) PCT).

2.1.6 The same consideration as made in the above paragraph regarding claim 1 is also valid for independent claim 9 since claim 9 is based on the same basic principle as claim 1 in terms of a process for operating a membrane fuel cell stack with dry gas supply. Also in document D2, the fuel cell stack is operated with dry gas supply, see paragraphs [0144] and [0155].

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2005/002227

**3 DEPENDENT CLAIMS 2-8 and 10**

Dependent claims 2-8 and 10 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).